



## **SUMMARY OF TRAC COMMENTS ON SAFETEA-LU REAUTHORIZATION**

March 4, 2011

### **Failures of Current Rail Policy Framework Necessitate Change:**

- Taxpayer subsidies for the railroads must end. Current policy fails to create any “responsible corporate citizen” expectations for the railroads -- unlike all other private commercial development in the United States. There must be clear policy that sets expectations for railroads that their private business interests cannot trump all other considerations and leave taxpayers responsible for rectifying the fall-out from their decisions. Federal law must frame a set of railroad development expectations for the public and the railroads in advance of any railroad making a decision that results in significant shifts of rail freight volume from one area to another. Right now, railroads have no incentive to weigh taxpayer or other transportation or business impacts in their planning and decision-making processes, as they are allowed to shift significant rail freight volumes without factoring in the taxpayer costs that stem from the necessity to undertake transportation projects (such as grade separations) to integrate increased traffic into impacted communities.
- Current policy clearly tips the interstate commerce balance for railroads in that mergers are routinely approved without a dedicated funding mechanism for mitigation projects that could ameliorate harms caused for: (1) other modes of transport in impacted communities; (2) existing business and commercial interests in impacted communities/regions; and, (3) the public safety of communities impacted by rail operations.
- The review process for railroad transactions is contentious, expensive, and time-consuming because parties are aware that public policy makes this a zero-sum game with a winner and a loser – with the loser generally being those entities impacted by significant increases in rail freight traffic. Because rail freight interests are currently prioritized above – rather than balanced with – the interests of impacted communities and existing businesses and transport modes, railroads minimize the amount they will invest in mitigating harms, and instead, focus their effort on fighting any substantial investment in rectifying the harms their operations cause.

### **Policy Changes that Would Balance Freight Rail and Public/Taxpayer Interests:**

- Setting of appropriate threshold criteria by Congress that would be applied by regulators to trigger a substantial railroad financing allocation for rail-to-road grade separation projects necessitated by shifting a significant amount of rail traffic from one rail line to another.
- Congressionally-authorized identification of rail freight corridors of national and regional significance (such as the CREATE project in Chicago) that will be the primary focus of federal infrastructure investments, along with the concurrent authority to hold railroads responsible for financing a substantial cost-allocation for infrastructure improvement projects *if* a railroad chooses to pursue merger transactions that will increase rail freight traffic above a baseline percentage on freight corridors that have not been designated by Congress as significant freight rail corridors.
- Congressional authorization that explicitly empowers federal regulators to make rail operation decisions (train lengths, volumes, travel time curfews, etc.) that can mitigate harms stemming from rail freight traffic until infrastructure improvement projects integrating that freight traffic into impacted communities are completed.

**TRAC “Win-Loss” Experience with Status Quo Rail Merger Policy Based on the CN-EJ&E Transaction**  
**& Balance that Can be Achieved Through Policy Changes**

STATUS QUO POLICY	RAILROAD IMPACT	COMMUNITY/PUBLIC IMPACTS	TRANSPORT/BUSINESS IMPACTS
<i>Environmental review process does not assess “public” impacts fully as long-term necessity for taxpayer funding of road-to-rail infrastructure projects is ignored</i>	<b>WIN</b> – no limitations on making significant traffic changes; on the EJ&E-CN merger this amounts to up to 400% increase in freight rail volumes	<b>LOSS</b> -- major down-the line public burden on specific impacted communities <u>AND</u> taxpayers – 26 most significantly impacted roadways in need of grade separation projects on the EJ&E will cost \$1.4 billion; only 27% of crossings on the EJ&E are grade-separated	<b>LOSS</b> -- other transport modes (cars/trucks and commuter rail) blocked with no redress (ex: of Metra STAR line – a collar-county suburban commuter line lost only viable track when CN purchased the EJ&E); local, regional, and interstate commerce business interests harmed as workers, customers and suppliers can’t get to and from collar county business sites freely
<i>No clear and defined expectations for railroads on mitigating harms stemming from railroad mergers</i>	<b>LOSS</b> – railroads look at financials of a merger with no certainty as to mitigation costs regulators will impose; regulator-imposed mitigation led to litigation on CN-EJ&E merger	<b>LOSS</b> – communities negotiate settlement agreements with railroads with little understanding of what the possibilities could be (ex: of Joliet, IL – according to the STB, it would have received a grade separation financed largely by CN, however, it settled early in the process with only a \$500,000 agreement in place); CN/EJ&E merger led to litigation due to arbitrary and capricious mitigation imposed by the STB	<b>LOSS</b> – businesses that developed in impacted areas are less viable and growth is curtailed; blocked crossing instances demonstrate major increases in traffic flow problems throughout the region due to CN traffic on the EJ&E
<i>No defined funding mechanism to finance roadway infrastructure projects necessitated by significant increases in rail operations</i>	<b>WIN</b> – railroads off the hook for even paltry status quo 5% match as impacted communities and states can’t assemble necessary funding package	<b>LOSS</b> – specific communities bear full freight traffic burden despite realizing no benefits from increased rail operations	<b>LOSS</b> – regional business interests are harmed when traffic gridlock caused by rail operations is not mitigated
SUGGESTED NEW POLICY	RAILROAD IMPACT	COMMUNITY/PUBLIC IMPACTS	TRANSPORT/BUSINESS IMPACTS
<i>Setting threshold criteria necessitating substantial railroad funding of rail-to-road grade separation projects</i>	<b>WIN</b> – railroads will have certainty around their financial obligations and this will drive focused railroad investments; NEPA process will be streamlined as threshold issues will be addressed in initial railroad application	<b>WIN</b> – community and taxpayer interests will be balanced with the interests of railroads	<b>WIN</b> – regional transport systems and businesses can plan for growth without having uncompensated harms created by freight rail operations
<i>Defining freight rail corridors (like Chicago’s CREATE) and holding railroads accountable for substantial costs of public infrastructure projects if railroads shift significant traffic off of these designated corridors</i>	<b>WIN</b> – railroads will have the certainty of knowing that long-term infrastructure needs are being addressed by U.S. policy/funds in a way that benefits their own long-term planning	<b>WIN</b> – by incentivizing railroads to minimize community impacts, railroads will work with one another and the public sector to increase efficiencies on key rail lines rather than expanding the geographical reach of problems created by rail operations	<b>WIN</b> – regional transport systems and businesses can plan development and growth based on long-term understanding of how rail operations will impact site location decisions
<i>Authorizing regulators to temporarily limit rail operations in decisions approving rail transactions</i>	<b>WIN</b> – the environmental review for rail mergers will be shorter and less contentious if communities have federal protections in place	<b>WIN</b> – Public interest will be balanced with railroad interests	<b>WIN</b> – other modes of transport and business interests will be balanced with railroad interests